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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,244	07/15/2003	Paul R. Schuster	25896.563/P0164A	8921

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COWAN, LIEBOWITZ & LATMAN, P.C.
1133 AVENUE OF THE AMERICAS
NEW YORK, NY 10036

EXAMINER

WEST, LEWIS G

ART UNIT	PAPER NUMBER
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2618

MAIL DATE	DELIVERY MODE
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07/16/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/620,244

Applicant(s)

SCHUSTER ET AL.

Examiner

Lewis G. West

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 May 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

Applicant's arguments filed May 11, 2007 have been fully considered but they are not persuasive. As pointed out in the previous action, using a cellular connection involves using a predetermined frequency for connection, which applicant fails to address. The fact that the device includes cellular components does not negate that fact that it reads on the claim language. Therefore applicant's arguments are not persuasive.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2, 3-7 and 9-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Breen (US 2003/0170001).

Regarding claim 1, Breen discloses a radio frequency (RF) proximity detection and identification system, comprising: at least one RF transmitter for receiving a control signal, modulating an RF signal to a preset modulation frequency upon receipt of the control signal, and wirelessly transmitting the modulated signal (inherent to the cellular connection); and an RF receiver for receiving the wirelessly transmitted modulated signal, determining the modulation frequency, and transmitting the modulation frequency to a remote location. [0028-0033]

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Regarding claim 2, Breen discloses the RF proximity detection and identification system of claim 1, wherein a transmission power of the RF transmitter is preset to transmit the modulated signal within a predetermined range. [0028-0033]

Regarding claim 4, Breen discloses an audience measurement system having at least one portable people meter (PPM) and a base unit, the CBET system containing a radio frequency (RF) proximity detection and identification system, comprising: an RF transmitter located in each PPM for receiving a control signal (14,15,16), modulating an RF signal to a preset modulation frequency, and wirelessly transmitting the modulated signal; and, an RF receiver located in the base unit for receiving the wirelessly transmitted modulated signal, determining the modulation frequency, and transmitting the modulation frequency to a remote location. [0028-0033]

Regarding claim 5, Breen discloses the system of claim 4, wherein the transmission power of the RF transmitter is preset to transmit the modulated system within a predetermined range. [0028-0033]

Regarding claim 6, Breen discloses the system of claim 5, wherein the RF transmitter further comprises an RF modulator for receiving the control signal and outputting an RF signal modulated to a preset frequency. [0028-0033]

Regarding claim 7, Breen discloses the system of claim 6, wherein the RF receiver further comprises an RF demodulator unit for receiving the wirelessly transmitted RF modulated signal, demodulating the received signal, and determining the modulation frequency of the received signal. [0028-0033]

Claim 9, Breen discloses a radio frequency (RF) proximity detection and identification method comprising the steps of: modulating an RF signal to a preset modulation frequency upon receipt of a control signal; wirelessly transmitting the modulated signal from a transmitter; receiving the wirelessly transmitted modulated signal; determining the modulation frequency of the received signal; and transmitting the modulation frequency to a remote location. [0028-0033]

Regarding claim 10, Breen discloses the RF proximity detection and identification method of claim 9, wherein a transmission power of the transmission of the modulated signal is preset to transmit within a predetermined range. [0028-0033]

Regarding claim 11, Breen discloses a critical band encoding technology (CBET) system having at least one portable people meter (PPM) and a base unit, the CBET system containing a radio frequency (RF) proximity detection and identification system, the RF proximity detection and identification system comprising: an RF transmitter unit contained in each of the at least one PPM, comprising: an RF modulation unit for receiving a control signal and modulating an RF signal to a preset modulation frequency; and a transmitter for transmitting the modulated signal as an RF modulated signal; and a receiver for receiving the transmitted modulated signal; and an RF demodulator unit for demodulating the modulated signal, and determining the modulating frequency of the signal. [0028-0033]

Regarding claim 12, Breen discloses the RF proximity detection and identification system of claim 11, wherein the modulating frequencies are transmitted to a remote location for further processing. [0028-0033]

Regarding claim 13, Breen discloses the RF proximity detection and identification system of claim 12, wherein a transmission power of the transmitter is preset to transmit the modulated signal within a predetermined range. [0028-0033]

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Breen in view of Examiner's official notice.

Regarding claim 3, Breen discloses the RF proximity detection and identification system of claim 2, wherein the RF transmitter located in each of the at least one PPM is modulated to a different frequency. However, examiner takes official notice that one of ordinary skill in the art at the time of the invention would have used different frequencies for the different devices communicating in a common area with a common device. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to in order to prevent interference between the devices and provide a unique identification of the signal from each device while both devices were communicating with a common secondary device.

Regarding claim 8, Breen discloses the system of claim 4, wherein the RF transmitter located in each of the at least one PPM is modulated to a different frequency. However, examiner takes official notice that one of ordinary skill in the art at the time of the invention would have

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used different frequencies for the different devices communicating in a common area with a common device. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to in order to prevent interference between the devices and provide a unique identification of the signal from each device while both devices were communicating with a common secondary device.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lewis G. West whose telephone number is 571-272-7859. The examiner can normally be reached on Monday-Friday 7:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew D. Anderson can be reached on 571-272-4177. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Lewis G. West
Primary Examiner
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